BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GILES F. AND HELEN E. LIEGEROT)

Appearances:

For Appellants: Giles F. Liegerot
in pro. per.

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Giles F. and Helen E. Liegerot for refund of personal income tax of $222.32, $431.56, $276.83 and $457.24 for the years 1971, 1972, 1973 and 1974, respectively. Further, pursuant to section 18594, appellants appeal a proposed assessment of additional personal income tax of $278.20 for the year 1975.

Appellants filed joint returns for the years on appeal, using the cash receipts and disbursements method of accounting. Upon examination of appellants' returns, respondent made several adjustments involving various deductions relating to a Christmas tree farm, educational expenses, a charitable contribution and gambling losses.

At the oral hearing in this matter, appellant appeared to concede that respondent properly disallowed some deductions. His main contention, however, was that respondent should follow federal adjustments made in 1973 and 1974, which would allow appellant greater deductions in those years. Appellant also expressed the belief that there was a federal revenue ruling which he believed supported the deductions he had claimed for the Christmas tree farm but he has not provided a citation to such a ruling, and we have determined that none exists. Furthermore, appellant has not presented any reason why respondent should not be upheld on every issue in question herein. Therefore, we conclude that respondent's action in this case was proper and we hereinafter set forth a brief summary of the facts and our decision on each issue,

Christmas Tree Farm

In 1971 appellants purchased a parcel of land to establish a Christmas tree farm. On their returns for 1971 through 1975, appellants claimed deductions for the expenses of clearing the land and preparing it for use, The claimed expenditures were treated in three categories. First, those expenditures for preparing the land, planting trees and the initial care of the newly planted trees were capitalized by respondent's auditor. This is in accord with respondent's regulation 17561, subdivision (a)(4)(ii), which requires capitalization of expenditures for items with a useful life extending substantially beyond the taxable year. Furthermore, the California and federal statutes governing costs for timber operations are substantially similar. (See Int. Rev. Code of 1954, §611 and Rev. & Tax. Code, § 17681.) For that reason, we may refer to federal regulations which treat the costs of planting and cultivating Christmas trees in the same manner as such costs for timber. (See Cal. Admin. Code, tit. 18, reg. 19253.) Thus, brush removal, seedlings, labor and tool expense are capitalized and recovered when the trees are sold or through depletion allowances. (See Treas. Reg. § 1.611-3 (a) (1960); Rev. Rul. 66-18, 1966-1 Cum. Bull. 59, mod. by Rev. Rul. 71-228 1971-1 Cum. Bull. 53.)

The second category of tree farm deductions included expenditures for the use of a pickup truck. On his federal returns, appellant claimed both a depreciation deduction and the standard mileage allowance, which includes a provision for depreciation. He apparently repeated this action in filing his California returns. Under California law, operating expenses for an automobile used in business are deductible (Cal. Admin. Code, tit. 18, reg. 17202(a)), or a deduction may be claimed for the depreciation of property used in business. (Rev. & Tax. Code, § 17208, subd. (a)(l).) But double deductions are not permitted. (Cal. Admin. Code, tit. 18, reg. 17201.)

The last category included various itemized deductions, including an alleged casualty loss, which appellant failed to document. The burden is on appellant to produce evidence showing his entitlement to claimed deductions and absent such evidence, he may not prevail. (New Colonial Ice co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934), Appeal of Robert J. and Evelyn A. Johnston, Cal. St. Bd. of Equal., April 22, 1975.)

Educational Expenses

In 1971 and 1972 appellants claimed a deduction in the amount of wages which Mr. Liegerot, a teacher during those years, claims he would have received had he completed certain education courses by September 1971. Sacramento State University did not offer these required. courses in 1971. As there is no authority for the claimed deduction it was properly denied by respondent. (See Rev. & Tax. Code, § 17201.)

Charitable Contribution

In 1973 appellants deducted $500.00 as the amount of a gift to their niece for educational expenses. Such a gift does not qualify as a contribution because it was not made to an organization which is operated exclusively for charitable purposes. (Rev. & Tax. Code, § 17214.)

Gambling Losses

Appellants claimed a deduction of $586.00 in 1971 for alleged gambling losses. No gambling income was reported in that period and, therefore, the deduction was properly denied. (Rev. & Tax. Code, § 17206, subd. (d).)

Finally, we conclude that respondent is not obligated to follow the federal adjustments which allowed greater deductions for the Christmas tree farm operation. Respondent's disallowance of claimed deductions is presumed correct and will be upheld in the absence of contrary evidence from the appellant. (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974.) Our discussion herein of the tree farm expenses demonstrates that respondent's auditor followed state and federal law and regulations in this matter and we have seen no evidence which would warrant a different result.

Accordingly, we conclude that in all matters here in issue, respondent must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Giles F. and Helen E. Liegerot for refund of personal income tax in the amounts of $222.32, $431.56, $276.83 and $457.24 for the years 1971, 1972, 1973 and 1974, respectively, be and the same is hereby sustained. Further, pursuant to section 18595, that the action of the Franchise Tax Board on the protest of Giles F. and Helen E. Liegerot against a proposed assessment of additional personal income tax of $278.20 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this '8th day of February 1979, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member